HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. ROHINI

Writ Appeal No.250 of 2007

Between:

M/s. Electronic Corporation of India Limited,
Rep., by its Managing Director, Moula Ali,
Hyderabad and two others

… Appellant

And

C. Karthikeyan

… Respondent

Counsel for the appellants : Shri P. Nageswara Sree

Counsel for the respondent : Shri D.V. Nagarjuna Babu

::JUDGMENT::

October 22, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 1-3-2007 passed by the learned Single Judge, whereby he confirmed ad interim order dated 15-2-2007 passed in WPMP No. 33253 of 2006 in Writ Petition No. 25902 of 2006 and dismissed WVMP No. 490 of 2007 filed by the

appellants for vacating the ad interim order.

A perusal of the record shows that respondent – Shri C. Karthikeyan was employed as Engineer (Trainee) in Electronic Corporation of India Limited (ECIL) in 1990 against the vacancy reserved for scheduled tribe candidates. He claimed the status as a scheduled tribe candidate on the basis of caste certificate issued by Tahsildar, Chennai. In 1995, a departmental enquiry was initiated against the respondent on the charge of having secured employment by furnishing false community certificate. During the pendency of the enquiry, the caste certificate of the respondent was cancelled by the concerned revenue authority of Chennai. He challenged the same before the Madras High Court in Writ Petition No. 10237 of 1997, which was allowed by that High Court on the ground of violation of the rules of natural justice. However, it was left open to the concerned authority to pass fresh order after giving notice and opportunity of hearing to the respondent herein.

In the enquiry instituted against the appellant, the enquiry officer submitted report with the finding that the charge levelled against the delinquent has been proved. A copy of the enquiry report was forwarded to the respondent three time and he was given opportunity to make representation on the findings of the enquiry officer. However instead of submitting reply, the respondent filed Writ Petition No. 7576 of 1997 in the Madras High Court and convinced that Court to stay the disciplinary proceedings. The interim order was made absolute on 13-3-2000. Writ Appeal No. 883 of 2000 preferred by ECIL was disposed of by the Division Bench on 5-9-2003 with an observation that the order passed by the Collector cancelling the community certificate is without jurisdiction, because the power to do so vests with the State Level Scrutiny Committee. Thereafter, Tamil

Nadu State Level Scrutiny Committee conducted a detailed enquiry and passed order dated 27-6-2005 holding that the respondent does not belong to scheduled tribe. That order is also under challenge before the Madras High Court, which has granted interim relief to the respondent.

In the meanwhile, Executive Director (Antenna Products Division), ECIL vide his order dated 6-8-2005 imposed the penalty of removal from service on the respondent on the ground that he secured employment by producing false caste certificate. The appeal preferred against that order was dismissed by General Manager (Human Resources), ECIL, Personnel Group, Hyderabad vide order dated 14-12-2005.

In the writ petition (Writ Petition No. 25902 of 2006) filed by him, the petitioner has questioned the legality of orders dated 6-8-2005 and 14-12-2005 mainly on the ground that during the subsistence of stay order passed by the Madras High Court in WPMP No. 29721 of 2005 in Writ Petition No. 27311 of 2005, the disciplinary authority could not have removed him on the charge of having secured employment by producing false caste certificate.

While admitting the writ petition, the learned Single Judge passed interim order dated 15-2-2007, whereby he suspended the operation of orders dated 6-8-2005 and 14-12-2005. The vacate petition filed on behalf of the appellants was dismissed by the learned Single Judge with an observation that in view of the interim injunction granted by the Madras High Court, the decision of the Scrutiny Committee will be deemed to have been put in abeyance and the same could not have been made basis for ordaining removal of the writ petitioner.

We have heard Shri P. Nageswara Sree, learned counsel for

the appellants and Shri D.V. Nagarjuna Babu, learned counsel for the respondent.

Since the writ petition filed by the respondent against his removal from service is yet to be adjudicated by the learned Single Judge, we do not consider it proper to express any opinion on the merits and demerits of the plea put-forward by him and the grounds taken by him in support of his challenge to order dated 6-8-2005 and 14-12-2005.

The admission of the writ petition by the learned Single Judge can be treated as sufficient by presuming that the petitioner (the respondent herein) has been able to make out a prima facie case. However, that by itself cannot justify suspension of the order of punishment passed more than one year and six months prior to the institution of the writ petition.

The parameters for exercise of the High Court's power to pass an order of injunction or stay in a petition filed under Article 226 of the Constitution of India are well-settled. The Court must feel convinced that the petitioner has been able to make out a strong prima facie case; that the balance of convenience is in favour of grant of interim order; that in the event of non-grant of interim relief, the petitioner will suffer irreparable injury and that public interest warrants exercise of discretion by the Court in favour of passing an interim order. The consideration of these factors must be reflected in the order of injunction or stay, moreso when such an order is mandatory in character. The admission of the writ petition or issue of notice to the opposite party is only indicative of the Court's willingness to examine on merits the issue raised by the petitioner in regard to the violation of his legal or constitutional rights or arbitrary or mala fide exercise of power by the State or its instrumentalities/agencies. In other words,

admission of the writ petition can be treated as indicative of the existence of prima facie case in favour of the petitioner. However, that, by itself, is not sufficient for passing an order of stay or interim injunction ex debito justitiae. Whenever a prayer for interim injunction or stay is made, the Court is duty bound to examine all the relevant factors and feel convinced that if the interim relief prayed for is not granted, the petitioner will suffer an injury, which cannot be compensated in terms of money or otherwise. The High Court must also feel satisfied that the injury to be suffered by the petitioner by non-grant of interim injunction or stay will be much more than the injury, which may be suffered by the non-petitioners on account of grant of interim injunction etc. The need for protecting the right of the petitioner must always be weighed against the corresponding need of protecting the non-petitioners against the injury which they may suffer in the event of grant of injunction or stay. Where the action of the State and/or its agencies/instrumentalities is challenged on the ground of violation of legal or constitutional right of the petitioner and there is a clash of the right of the individual or group of individuals on the one hand and the right of the public at large on the other hand, the Court must carefully examine the entire matter and ensure that the public interest is not sacrificed in the name of protecting the individual right. If an order of injunction or stay is likely to prejudice the public cause or inflict injury on the members of the public by means of deprivation of basic amenities, the Court should be extremely loath and circumspect in entertaining the prayer for interim relief. In **Wander Ltd. v. Antox India (P) Ltd.** (supra), the Supreme Court reiterated the above noted principle in the following words:

> "Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both

contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

> "...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies."

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted."

In the light of the above, we shall now decide whether the discretion exercised by the learned Single Judge to stay the orders passed by the disciplinary and appellate authorities is based on correct appreciation of legal principles or the under challenge is vitiated by an error of law warranting interference under Clause 15 of the Letters Patent.

The admission of the writ petition filed by the respondent can be

treated as indicative of the satisfaction of the learned Single Judge that the writ petitioner has been able to make out a prima facie case. However, that was not sufficient for staying the removal of the writ petitioner from service and that too by ignoring the fact that the order of punishment was passed by the disciplinary authority because the writ petitioner was found guilty of having secured employment by producing false caste certificate. In our opinion, before passing an interim order which has the effect of compelling the appellants to reinstate the writ petitioner (the respondent herein) after a gap of more than one year and six months of his removal from service, the learned Single Judge was duty bound to consider the factors like irreparable injury, balance of convenience and public interest. Unfortunately, the learned Single Judge overlooked these important factors and granted injunction as if such an order can be passed *ex debito justiciae*.

Here it is apposite to mention that if the writ petition is finally allowed, the learned Single Judge may direct reinstatement of the respondent with consequential benefits and costs. It is also quite possible that the Court may dismiss the writ petition. Therefore, there could be no justification for interim reinstatement of the respondent, who, as mentioned above, was removed from service on the charge of having secured employment on the basis of false caste certificate. We are further of the view that implementation of the order of stay will certainly inflict irreparable injury on the employer like ECIL, which cannot be compensated in terms of money.

In the result, the appeal is allowed. The order passed by the learned Single Judge in WVMP No. 490 of 2007 and WPMP No. 33253 of 2006 in Writ Petition No. 25902 of 2006 is set aside and interim order dated 15-2-2007 passed in WPMP No. 33253 of 2006 is

vacated.

However, keeping in view the nature of the case, we deem it proper to request the learned Single Judge to entertain the request, if any, made on behalf of the respondent herein for according out of turn hearing to the writ petition.

G.S. SINGHVI, CJ

G. ROHINI, J

October 22, 2007
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